



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1027 N. Randolph Ave.
Elkins, WV 26241

Bill J. Crouch
Cabinet Secretary

Jolynn Marra
Interim Inspector General

May 29, 2020



RE: [REDACTED] v. WVDHHR
ACTION NO.: 20-BOR-1384

Dear Ms. [REDACTED]

Enclosed is a copy of the decision resulting from the hearing held in the above-referenced matter.

In arriving at a decision, the State Hearing Officer is governed by the Public Welfare Laws of West Virginia and the rules and regulations established by the Department of Health and Human Resources. These same laws and regulations are used in all cases to assure that all persons are treated alike.

You will find attached an explanation of possible actions you may take if you disagree with the decision reached in this matter.

Sincerely,

Pamela L. Hinzman
State Hearing Officer
Member, State Board of Review

Encl: Claimant's Recourse to Hearing Decision
Form IG-BR-29

cc: Tammy Grueser, BoSS

**WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES
BOARD OF REVIEW**

[REDACTED],

Appellant,

v.

Action Number: 20-BOR-1384

**WEST VIRGINIA DEPARTMENT OF
HEALTH AND HUMAN RESOURCES,**

Respondent.

DECISION OF STATE HEARING OFFICER

INTRODUCTION

This is the decision of the State Hearing Officer resulting from a fair hearing for [REDACTED]. This hearing was held in accordance with the provisions found in Chapter 700 of the West Virginia Department of Health and Human Resources' Common Chapters Manual. This fair hearing was convened on May 27, 2020, on an appeal filed March 9, 2020.

The matter before the Hearing Officer arises from the February 28, 2020 decision by the Respondent to discontinue the Appellant's Aged/Disabled Waiver Medicaid Program services due to non-compliance and an unsafe home environment.

At the hearing, the Respondent appeared by Tammy Grueser, RN, Bureau of Senior Services. Appearing as witnesses for the Respondent were [REDACTED], Social Worker/Case Manager, [REDACTED]; [REDACTED], RN/Homemaker Supervisor, [REDACTED]; [REDACTED], RN/Homemaker Supervisor, [REDACTED]; and [REDACTED], In-Home Service Coordinator, [REDACTED]. The Appellant appeared *pro se*. Appearing as a witness for the Appellant was [REDACTED], Appellant's nephew. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Aged & Disabled Waiver Services Policy Manual Section 501.34
- D-2 Request for Discontinuation of Service dated February 21, 2020
- D-3 ADW termination notice dated February 28, 2020
- D-4 Behavior Contract signed by Appellant on August 6, 2019
- D-4 Electronic mail transmission dated December 13, 2019 and supporting documentation
- D-5 Log Notes and written witness statements
- D-6 ADW Communication Forms
- D-7 Aged and Disabled Waiver Service Plans
- D-8 Pre-Admission Screening (PAS) form and PAS Summary dated December 12, 2019

- D-10 Aged and Disabled Waiver Person-Centered Assessment
- D-11 Aged and Disabled Waiver Service Plan

Appellant's Exhibits:

None

After a review of the record, including testimony, exhibits, and stipulations admitted into evidence at the hearing, and after assessing the credibility of all witnesses and weighing the evidence in consideration of the same, the Hearing Officer sets forth the following Findings of Fact.

FINDINGS OF FACT

- 1) The Appellant was a recipient of Aged/Disabled Waiver Medicaid benefits.
- 2) On February 21, 2020, [REDACTED] ([REDACTED]) filed an Aged and Disabled Waiver Request for Discontinuation of Service based on an unsafe environment in the Appellant's home and non-compliance with program requirements (D-2).
- 3) On February 28, 2020, the Respondent issued notice (D-3) to the Appellant, informing her of its decision to discontinue services under the Aged/Disabled Waiver Program.
- 4) Homemakers assigned to the Appellant's care reported several incidents of inappropriate or non-compliant behavior in the household.
- 5) A homemaker witnessed a verbal altercation between the Appellant and her son on July 3, 2019. When the homemaker threatened to call law enforcement regarding the son's behavior, the Appellant became angry. The Appellant cursed at the homemaker on the following day and told her to leave the residence (D-6).
- 6) The Appellant's son and nephew made inappropriate sexual comments to a homemaker in July 2019 (D-6).
- 7) The Appellant cancelled homemaker services for the day of July 30, 2019 - stating that she did not need them - after the homemaker had already arrived at her residence (D-7).
- 8) The Appellant signed a Behavior Contract on August 6, 2019 (D-4), indicating that she understood the homemaker had specific daily duties and that she would not ask the homemaker to perform any additional tasks. By signing the contract, the Appellant also agreed to treat her homemaker and case management staff with "dignity and respect," and indicated that she would not "yell at, cuss at, threaten or call my homemaker names, nor will I make false accusations against my homemaker." The Behavior Contract also specified that the Appellant's family members or friends should treat the homemaker with "dignity and respect."

- 9) The Appellant allowed homemaker services on one date in October 2019 (D-6 and D-8) for a monthly total of four hours. On that date, the Appellant's son cursed at the Appellant and the homemaker.
- 10) The Appellant received homemaker services on four dates in November 2019 for a monthly total of 15 hours (D-6 and D-8).
- 11) The Appellant had homemaker services for four hours on one date in December 2019 (D-6 and D-8).
- 12) A Case Management Agency representative visited the Appellant's home during a Pre-Admission Screening in December 2019 and discovered "piles of junk everywhere" with a small trail through the living room (D-5).
- 13) Exhibit D-5 reveals that during the PAS Assessment, the Appellant:
 - Accused homemakers of throwing away her personal items and damaging her dishwasher and washing machine.
 - Stated that the only personal care service she would allow was assistance in and out of the shower, although she was assessed on the PAS (D-9) as requiring physical assistance with eating, bathing, dressing and grooming.
 - Said she would refuse to allow homemaker assistance with grooming and meal preparation.
 - Cursed at the [REDACTED] representative and demanded additional homemaker hours.
 - Said she was not "suicidal," but indicated that she was "homicidal" toward her son.
- 14) The Appellant's Aged and Disabled Waiver Person-Centered Assessment (D-10) and Service Plan (D-8) cites the Appellant's need for partial assistance in the areas of bathing, grooming, dressing, ambulation, transferring, toileting, medication prompting, meal preparation, laundry, housekeeping, transportation, errands and community activities.
- 15) The Appellant was assigned 13 different homemakers since February 2018 (D-6).

APPLICABLE POLICY

Aged/Disabled Home and Community-Based Services Waiver Policy Manual Section 501.34 (D-1) states that Aged/Disabled Waiver services can be discontinued when an individual is persistently non-compliant with his/her service plan. Policy describes an unsafe environment is one in which the personal attendant and/or other agency staff are threatened or abused, and the staff's welfare is in jeopardy. This may include, but is not limited to, the following circumstances: verbal abuse, threatening behavior and sexually inappropriate behavior. In the case of unsafe environment, services may be discontinued immediately upon approval.

The Families First Coronavirus Response Act (FFCRA), Public Law No. 116-127, enacted on March 18, 2020, provides a temporary increase in states' Medicaid Federal Medical Assistance Percentage (FMAP) of 6.2 percentage points for expenditures that are ordinarily paid at the state's regular FMAP rate. This FMAP increase applies until the end of the quarter when the coronavirus public health emergency declaration ends. To be eligible for the increased FMAP, states are not permitted to disenroll anyone enrolled in Medicaid as of March 18, 2020, or who enrolls during the period of the public health emergency, unless the person voluntarily requests their coverage be terminated or the person is no longer a state resident. This requirement applies regardless of any changes in circumstances that would otherwise have resulted in coverage termination. States can move an individual to an eligibility group with increased benefits during the national emergency if they experience a change in circumstances. However, the state may not decrease an individual's benefits.

States seeking to claim the temporary FMAP increase are required to maintain an individual's eligibility for benefits (through the end of the month in which the public health emergency ends) for which an individual attained eligibility under the state plan or a waiver of the state plan. This means that the state should maintain an individual's participation in a 1915(c) waiver for which the individual is enrolled during the emergency period, even if the individual is determined to no longer meet the level of care (LOC) or other requirements for waiver participation, such as receiving a service within the last 30 days. Moreover, if a state determined after enactment of the FFCRA that an individual had not received services within the previous 30-day time period and terminated the individual, the state should reinstate the individual to ensure that the state can receive the 6.2 percentage point FMAP increase. However, states should continue to apply any criteria that is used in determining the services included in the individual's 1915(c) person-centered service plan. Services would only be provided if they are reflected in the person-centered service plan and based on an assessment of functional need, per regulations at 42 CFR 441.301(c)(2). An individual's person-centered care plan can be updated to reflect updated assessments of functional need during the period of the public health emergency. Services should not be provided that are not based on an assessed need.

DISCUSSION

Policy states that Aged/Disabled Waiver Services can be discontinued when the person receiving the services is persistently non-compliant with his/her Service Plan and provides an unsafe home environment, which can entail verbal abuse, threatening behavior and/or sexually inappropriate behavior.

West Virginia accepted the increased federal Medicaid assistance funding that was provided as part of the Families First Coronavirus Response Act. As a condition of receiving the increased federal funding, states cannot terminate Medicaid coverage or decrease Medicaid benefits for individuals who were active recipients as of March 18, 2020, until the emergency health care crisis has come to an end.

The Respondent notified the Appellant on February 28, 2020, that her Aged/Disabled Waiver Medicaid benefits would be discontinued based on non-compliance. While the notice appears insufficient because it cites non-compliance with “members responsibilities” as the reason for discontinuation, the issues of non-compliance with the Service Plan and unsafe environment were clarified during the hearing and both parties addressed the subjects.

While the Appellant denied that verbal abuse and inappropriate behavior had occurred in her home, the Respondent provided sufficient evidence to determine that the Appellant was persistently non-compliant with her Service Plan - including refusing services specified under the Service Plan - and that she provided an unsafe home environment for care providers based on verbal abuse, domestic fighting within the home and inappropriate sexual comments.

However, the Respondent cannot terminate the Appellant’s services during the emergency health care crisis pursuant to the Families First Coronavirus Response Act. While the Appellant’s discontinuation notice was dated February 28, 2020, her fair hearing request was filed on March 9, 2020, and her Aged/Disabled Waiver slot remained open and active as of March 18, 2020, pending a final hearing decision. The final decision was issued after March 18, 2020, and the Appellant’s Aged/Disabled Waiver case will remain active until the termination of the public health care emergency. While the case should remain active, the Case Management Agency is not required to provide homemaker staffing in the Appellant’s residence based on safety concerns.

CONCLUSION OF LAW

- 1) The Respondent discontinued the Appellant’s Aged/Disabled Waiver Medicaid services based on persistent non-compliance with her Service Plan and an unsafe home environment.
- 2) The Families First Coronavirus Response Act provided increased federal Medicaid funding during the COVID-19 health care emergency.
- 3) As a condition of receiving the increased Medicaid funding, states cannot terminate or reduce Medicaid benefits for individuals receiving Medicaid as of March 18, 2020.
- 4) West Virginia accepted the increased Medicaid funding and must, therefore, adhere to the conditions as set forth in the Families First Coronavirus Response Act.
- 5) Whereas the Appellant had an active Aged/Disabled Waiver case as of March 18, 2020, pending a hearing decision, the Respondent cannot discontinue her benefits until the emergency health care crisis declaration has ended.
- 6) The Appellant demonstrated a persistent failure to comply with her Service Plan and created an unsafe home environment; therefore, the Case Management Agency is not required to provide homemaker services in the Appellant’s residence.

DECISION

The Respondent did not err in its assessment that the Appellant persistently failed to comply with her Service Plan and allowed an unsafe home environment. However, due to the FFRCA, the Respondent's action to discontinue the Appellant's Aged/Disabled Waiver Medicaid Program benefits is **REVERSED**.

ENTERED this 29th Day of May 2020.

Pamela L. Hinzman
State Hearing Officer